UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES NEW YORK BRANCH OFFICE

FIRST STUDENT, INC. Employer

and Case No. 34-RC-2250

CONNECTICUT STATE EMPLOYEES ASSOCIATION, LOCAL 2001, SEIU Petitioner

ERRATUM

The decision in this case, which issued on June 5, 2008, contains an inadvertent error of the appearances. Attached is a corrected copy of the decision.

Dated at Washington, D.C., this 12th day of June 2008.

Joel P. Biblowitz Administrative Law Judge

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ASSOCIATION, LOCAL 2001, SEIU
Petitioner

Todd Logan, Esq., Labor Counsel, for the Employer. Robert Randall, Organizer, for the Petitioner.

DECISION ON CHALLENGES

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on May 13, 2008 in Hartford, Connecticut. Pursuant to a Stipulated Election Agreement approved by the Regional Director for Region 34 of the Board on March 5, 2008, an election was conducted on April 11, 2008 in the following unit of employees of the Employer:

All full-time and regular part-time school bus drivers employed by the Employer at its Old Lyme, Connecticut facility; but excluding office clerical employees, monitors, mechanics, and dispatchers, and all guards, professional employees and supervisors as defined in the Act.

The Tally of Ballots showed the following:

Approximate number of eligible voters	21
Void ballots	0
Votes cast for Petitioner	
Votes cast against participating labor organization	88
Valid votes counted	
Challenged ballots	2
Valid votes counted plus challenged ballots	

Challenges were sufficient in number to affect the result of the election.

The Petitioner challenged the ballots of Charlie Chapman and Diane Wyzykowski, alleging that, although they are drivers employed by the Employer, they are not employed at the Old Lyme facility, and therefore were not eligible voters. The Employer alleged that Chapman and Wyzykowski are drivers who service the Old Lyme School district, are employed in the stipulated unit, and therefore were eligible to vote.

The Employer operates three facilities in Northeastern Connecticut within ten to fifteen miles of each other, Old Lyme, the only facility covered by the Stipulated Election Agreement, Chester and Westbrook. There are approximately twenty drivers at both the Old Lyme and Chester facility; apparently, there are fewer at the Westbrook facility. The overall supervisor and

dispatcher for all three facilities is Frank Kulick, the Employer's contract manager, who works at the Chester facility. In his absence, Audra Tiezzi, also located at the Chester facility, is the principal dispatcher for all three facilities. Nancy Antone is the dispatcher located at the Old Lyme facility. Kulick testified that she is an "hourly dispatcher" at Old Lyme who, this year, by her own choice, has been driving a bus route for the Employer 75% of the time. She also does "route troubleshooting" and keeps him informed of personnel matters. He testified that Chapman is a special needs route driver for the Lyme/Old Lyme school district. The Employer maintains a separate seniority list for each of the three locations. If an employee transfers to a different yard, he/she loses their seniority for bidding on charter work, but not seniority for wage rates. Wyzykowski and Chapman are both listed on the Old Lyme seniority roster.

Wyzykowski drives a special ed van that she picks up and drops off daily at the Chester facility. The only time that she has spent at the Old Lyme facility was during her training from October 2007 through February 2008. Since that time her only physical connection to the Old Lyme facility is her occasional use of the bathroom at that facility. She considers Kulick to be her boss, and whenever she needs permission for something, such as time off, she asks him, and she receives her work assignments from Kulick and Tiezzi. She picks up and drops off children living in, and outside of, Old Lyme and transports them to a school in Cromwell, Connecticut. Her pick ups begin, and drop offs end in the Old Lyme area. Her company ID badge lists her as an Old Lyme driver and she considers herself an Old Lyme driver. On a Time Off Request that she submitted to the Employer in January 2008, she stated that she is an Old Lyme driver. Kulick testified that in November 2007, after Wyzykowski had been in training for about a month, Old Lyme driver Sheila Thomas told him: "We really want Diana in the Old Lyme yard" and he told her, "That's good because that's where she's going." Thomas denies making this statement to Kulick.

Chapman, who has been employed by the Employer for four years, transports "special kids" in one of the Employer's cars, which he picks up and drops off daily at the Westbrook facility. All the children he services are from either Old Lyme or East Haddam, which is located about ten miles north of Chester; Old Lyme and Westbrook are in the opposite direction. He attended safety meetings and "kickoff meetings" conducted by the Employer at a fire house in Westbrook or another neutral location with drivers from all three locations at the start of the school year. At two meetings conducted by the Employer in 2006, Chapman signed the attendance sheet as an employee at the Old Lyme facility, and the Employer's records list him as an employee at the Old Lyme facility. There is no dispatcher or supervisor at the Westbrook facility, and he receives changes in assignments from Tiezzi (in Chester) or Antone (in Old Lyme). When his car had a flat tire, he called Antone for assistance. His company ID lists him as an Old Lyme driver. Other than picking up and dropping off his car at the Westbrook facility, he does not spend any time at any of the facilities.

The Employer's Old Lyme and Chester facilities keep in contact with the drivers by way of two way radios located in each of the Employer's vehicles; as there are no dispatchers or supervisors at the Westbrook facility, there are no transmissions from that facility. Kelly Nickerson was employed as a bus driver by the Employer at its Chester facility for nine years until she was laid off in April 2008. When she had a problem, she notified Tiezzi; she has never heard Antone giving orders or assignments to Chester or Westbrook drivers. Nickerson testified that Antone does not drive a regular route for the Employer. Thomas testified that the Old Lyme drivers take their direction from Antone, and she has never heard Wyzykowski or Chapman speaking to Antone over the two way radio. Neither Wyzykowski nor Chapman work at the Old Lyme facility, and with the exception of the period that Wyzykowski was being trained, Thomas has not seen either of them at the Old Lyme facility. 95% of the time she hears Chapman speaking over the two way radio it is to Tiezzi. Antone assigns the charters out of the Old Lyme

facility; Tiezzi assigns the charters for the Chester and Westbrook facilities. Marilyn Goss, who has been employed as a driver by the Employer at the Old Lyme facility for seven years, testified that, with the exception of Wyzykowski's training, and the safety meetings at Old Lyme that Chapman and Wyzykowski attended, she has never seen them at the Old Lyme facility. They receive their assignments from, and report problems to, Tiezzi, never Antone, who gives Goss her assignments. There was a "mandatory meeting" at Old Lyme recently; neither Wyzykowski nor Chapman attended it.

It has long been established that the party seeking to exclude an individual from voting bears the burden of establishing that the individual was, in fact, ineligible to vote. *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986). Therefore, in the instant matter it is Petitioner's burden to establish that Wyzykowski and Chapman were not employed by the Employer at its Old Lyme facility. The Petitioner clearly has not satisfied this burden.

The principal evidence produced by the Petitioner to satisfy this burden was the unrefuted testimony that Wyzykowski and Chapman picked up and dropped off their vehicles at Chester and Westbrook and spent almost no time at the Old Lyme facility. This, however, proves little or nothing. Their vehicles are kept at Chester and Westbrook for the convenience of their runs and the nature of their work keeps them on the road all day, picking up and dropping off students, leaving them little time to "spend" at the Old Lyme facility. There was also some testimony that they take their direction from Tiezzi, not Antone. However, as I credit Kulick's testimony that he and Tiezzi are the principal supervisors for the drivers from all three facilities, and that Antone drives a bus most of the time; this also proves little or nothing. On the other hand, there is a substantial amount of unrefuted evidence that they are employed at the Old Lyme facility; both Wyzykowski and Chapman principally service students from the Lyme/Old Lyme school district, and consider themselves to be employed at the Old Lyme facility. Since 2006, Chapman has signed forms for the Employer as an employee at Old Lyme and in January 2008 Wyzykowski submitted a Time Off request listing herself as an Old Lyme employee. In addition, their IDs state that they are employed at the Old Lyme facility, and they are listed on the Old Lyme seniority list.

I therefore find that the Petitioner has failed to establish that Wyzykowski and Chapman were not employed by the Employer at its Old Lyme facility, and I therefore recommend that the challenges to their ballots be overruled, and that the ballots be opened and counted.

Conclusions

Based upon the above, I recommend that the ballots of Charlie Chapman and Diane Wyzykowski be opened and counted. The regional office, after opening and counting the ballots of Chapman and Wyzykowski, shall issue an appropriate certification.¹

Dated, Washington, D.C., June 5, 2008

Joel P. Biblowitz Administrative Law Judge

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¹ Under the provisions of Section 102.69 of the Board's Rules and Regulations, Exceptions to this Decision may be filed with the Board in Washington, D.C. within 14 days from the date of issuance of this Decision and recommendation. Exceptions must be received by the Board in Washington by June 19, 2008.